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THE NEED FOR THE CREATION OF AN EFFECTIVE INTERNATIONAL CRIME AND JUSTICE PROGRAMME

Report of the Committee on Crime Prevention and Control at its eleventh session on the functioning and programme of work of the United Nations in crime prevention and criminal justice**

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I. INTRODUCTION

1. The effective control of crime and protection of citizens are at the heart of governmental responsibility. If a nation cannot meet this basic responsibility, it has little hope for reaching its potential, from a social, economic and cultural point of view. Crime is a particularly serious impediment to harmonious development. It dissipates or misdirects the gains of economic growth and impairs the quality of life. Yet, serious crime, affecting individuals, communities and nations, is becoming more widespread and in some countries pervasive, and is increasingly transcending national frontiers.

2. Effective international co-operation is necessary to help countries in dealing with problems of national and transnational crime. The available assistance is grossly inadequate. Fundamental changes are required in the size and form of the international effort. A programme of adequate scope will prove far less costly to the international community and to individual States than continuing to suffer each year enormous monetary losses and the immeasurable human cost which crime inflicts.

3. Such a programme should stem from an unqualified commitment of the world community of States to invest the necessary human capital and ingenuity, financial resources and modern technical means in the preservation of law, justice and security. This commitment should involve the convening of a world summit and the adoption of appropriate international instruments.

II. THE PROBLEM OF CONTEMPORARY CRIME

4. Serious crime is an exceptionally severe problem in the majority of the nations of the world. Serious crime directly or indirectly affects all citizens and all private and governmental enterprises. It has reached such an extent that, from a moral and social standpoint, it cannot be tolerated and, from an economic standpoint, it is so costly to individual citizens and to nations that its sufferance is suicidal.

5. Crime within national borders is only part of the problem. Over the past several years transnational crime has accelerated to scarcely believable dimensions. Modern means of communication, travel, and transfers of goods and money have made international threats out of domestic criminal enterprises. Certain international programmes, as well as many national programmes, have been crippled by proliferating crime.

A. The problem at the national level

6. Crime at the national level is becoming more serious in its extent, its nature, and its costs.

1. The extent of contemporary crime

7. It cannot be assumed that the extent of criminal activity would decrease, as nations develop socially and economically. Many countries, both developing and developed, have not succeeded in reducing criminal activity to a tolerable level. A few nations have been somewhat more successful. Over the past 10 years, however, there has been a considerable increase in the amount of crime in most parts of the world. 1/ The total amount of reported crime has been increasing on a world-wide average of 5 per cent each year - well beyond a rise attributable to population growth. 2/ At this rate, crime is rapidly outstripping the capacity of many national Governments to keep pace with it, and has already out-paced their capacity to reduce it.

8. The number of reported violent crimes against persons - including murders, maimings and rapes - has risen significantly in recent years. 3/ The number of reported property crimes - including robbery, theft, and embezzlement - has increased world-wide over the early 1980's by almost 30 per cent. 4/ Today, a country of ten million in population must expect to deal each year with tens of thousands of reported violent crimes and hundreds of thousands of reported crimes involving the taking of property. But these figures reflect only the crimes actually reported by victims to law enforcement authorities. In terms of the crimes that actually take place, as opposed to the crimes the victims report to the police, such a country will actually suffer each year over a hundred thousand violent crimes and far over a million crimes involving the taking of money or property. In one developed country with a particularly high rate of crime, careful surveys of unreported crime have revealed that in an average lifetime one out of 133 citizens will become a murder victim; eight out of ten will become the victim of an attempted violent offence, and over half will be victimized by such a crime more than once; almost every citizen will become the victim of a personal theft, and almost nine out of ten will suffer three or more such personal thefts. 5/

2. The nature of contemporary crime

9. Disturbing changes are taking place not only in the amount of crime, but also in the nature of crime. Crime by organized criminal groups has expanded to alarming proportions, with particularly serious consequences in terms of physical violence, intimidation and corruption of public officials. Terrorism has claimed tens of thousands of innocent victims. Episodes of senseless mass killings have broken out in a number of countries on all continents. Economic offences involving corruption and extortion have tainted the highest levels of government, industry and banking. Predatory trafficking in addictive narcotics has become a world-wide tragedy - it has crippled the lives of the addicted victims; it has brought millions of other citizens face-to-face with unprecedented violence; and it has so enriched its criminal perpetrators that they can openly flout the authority of States. Criminally reckless environmental destruction has taken such alarming forms and dimensions - through both catastrophic accidents and gradual, insidious despoilation - that it has become recognized as a crime against the world itself.

3. The costs of contemporary crime

10. The true costs of crime, some direct and some indirect, some borne by individuals and some borne by society, have been perceived only sporadically and imperfectly as a few egregious cases break to the surface of general understanding and give a brief glimpse of the enormous price they claim from individuals and societies. The cumulative, ongoing costs are obscured by difficulties in obtaining adequate information and assessing the economic impact of crime and its ramifications. The social cost, in terms of tragic human suffering and loss of productive capacity, is immeasurable. All indicators now suggest that the full impact of crime is staggering and far greater than is generally appreciated by nations and those responsible within nations for the formulation of criminal policy.

a. Monetary costs

11. Only to a limited extent can the direct and indirect consequences of crime be estimated in financial terms. The community and the State, of course, bear obvious costs from the operation of an extensive criminal justice system comprised of police and investigators, a prosecution service, a judiciary, a system of confinement and rehabilitation, programmes designed to alleviate the plight of victims, and a variety of related services. As indicated in paragraph 14, the costs of these services constitute a significant proportion of the budgets of Member States.

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12. Individuals, too, incur obvious costs. Direct financial costs to the individual victims of crime are borne through medical expenses, loss of earnings and loss of property. 6/ The physical consequences can be violent and brief, or they can be chronic. Victims can also suffer socially and psychologically. The social effects include the possible loss of one's job following disability and, as a result of feelings of insecurity, the shunning of community contacts. The psychological effects resulting from violent crimes, sexual offences, burglary of one's home and other particularly traumatic crimes, can be severe and persistent, manifesting themselves in the form of feelings of fear, shame, depression and guilt, with consequences that affect the victim's ability to function and contribute to society.

13. The indirect costs of crime include the consequences borne by other members of society who are not usually perceived as victims. Some indirect costs are exceedingly difficult to quantify in monetary terms, such as the emotional pain suffered by family members and friends. Others are more susceptible to measurement, even though it can be taken only roughly. Witnesses have to spend hours or even days involved in police investigations and in court proceedings. Consumers will have to pay higher prices as a result of crimes directed at businesses. Property owners face increased insurance premiums, as the calculated risks of theft, arson and other crimes increase. Enterprises unable to afford increased premiums are left without financial protection and thus driven out of business or left vulnerable to what may be catastrophic financial loss. Persons made apprehensive by criminal activity are induced to expend their savings on security devices and services. Citizens find themselves subjected to higher taxes to cover the shortfall caused by tax evaders.

14. The monetary costs of the operation of a crime prevention and criminal justice system are somewhat more susceptible to measurement. 7/ Although nations differ in their approaches to crime prevention and the responses to crime by their differing legal systems, all support the functions of government most commonly discharged by ministries of the interior, ministries of justice, and the judiciary. As crime rises, the costs of those functions also rise. 8/ The more highly developed countries expend an average of 2 or 3 per cent of their budgets on crime control. In developing countries, an average of 9 to 14 per cent of the budgets is consumed by the attempt to provide crime prevention and criminal justice services. 9/ As a rough extrapolation, it would appear that national governments collectively expend over 300 billion dollars each year on crime prevention and criminal justice services. 10/

b. Social costs

15. The direct social costs of crime are high in all countries. They stem principally from the serious drain on the human and material resources of countries, reducing the capacity of governments to make progress in other areas of need.

16. The indirect social consequences are at least equal in importance. Over a period of time, crime can lead a nation into one of several forms of social decline. It can result in extreme cases numbing stultification, in chaos, or in governmental repression.

17. If citizens suffer from a constant fear of crime, if they are demoralized by pervasive and obvious corruption, or if they are intimidated by the abuse of authority by those in positions of trust, they are not likely to play their expected role in the development of society. When citizens are unable or unwilling to freely participate in national life and the developmental effort, and when at

the same time, widespread economic, industrial and organized crime undercuts local and national policies, a country's economic growth and social peace become seriously impaired.

18. If the State is perceived as being unable to prevent and respond adequately to crime, the confidence of citizens in the efficacy of their government is severely undermined, frustration turns to despair, and then to embittered indifference, and the capacity for personal and national productivity is severely diminished.

19. Moreover, domestic peace and stability are threatened. The burden of crime affects all citizens, but it falls unequally on different groups in society. The groups that are most at risk are often those which are least able to protect themselves against crime and to cope with the depredations that it inflicts. Furthermore, private protection and enforcement measures often develop and surpass the limits established by law, and violent self-help is sometimes undertaken as a last resort. In addition, the economic crises of developing countries and the accompanying reductions it causes in development programmes and social assistance activities, generated social tensions which in turn cause increasing criminality.

20. Another chain of consequences includes oppressive reaction. When levels of crime threaten a nation's development, a government may counter with increasingly repressive measures which prove difficult to restrict to their intended purposes, and which may reflect a strong tendency to suppress basic human rights, increase social tensions, and severely undermine the prospects for economic progress.

21. In summary, the ultimate cost of crime is both social and economic, including the failure of, or severe detriment to, social and economic development. If government is unable to achieve its most fundamental purpose - protecting citizens from those among them who would transgress the basic rights of others - it has not provided the foundation on which it can achieve its other purposes. Without an effective programme of crime prevention and control, no educational efforts, no agricultural reforms, no anti-poverty measures, no industrial programmes can really be fully successful. Without domestic tranquility and confidence in government, there can be no true social and economic evolution or attainment of postulated national goals.

B. The problem at the international level

1. The extent and nature of contemporary transnational crime

22. For most of human history, transnational crime was severely limited by simple geographic constraints. The constraints of the past, however, have been overcome by technological developments. Modern methods of transport, communications and transfer of monies have not only created the conditions for the internationalization of business and other endeavours for which they were intended, but they have also created the conditions for the internationalization of crime. Today, organized crime, drug trafficking and terrorism can be perpetrated on a transnational scale fully as easily as they can be on a local scale. Indeed, such illicit activities can be carried out even more easily transnationally; the geographic boundaries that have constituted barriers to the internationalization of business and industry have provided protection for the internationalization of crime. The limited geographic reach of national laws and national law enforcement authorities have made transnational crime more attractive and more lucrative than national crime. The conflicts among national laws, the confusion of national regulations, and the antiquated international procedures for obtaining evidence and apprehending offenders have made the transnational arena the field of choice for sophisticated criminals. The profits are exceedingly high, and the chances of being brought to justice exceedingly low. The result has been a tremendous

burgeoning of transnational crime over the past two decades. Its true costs can scarcely be estimated, but the profits from illegal drug trafficking alone are believed to approximate 500 billion US dollars a year, a sum equal to the combined gross national products of about two thirds of the Member States of the United Nations. 11/

23. Organized criminal enterprises have become exceptionally adept at using new developments in science and technology, and are gaining ground both in scope and in sophistication. Criminal organizations regularly employ virtually every aspect of new technology to collaborate across national frontiers and to use global strategies that no State can counteract alone. These organizations have become particularly adroit in profiting from gaps and differences in national legislation and from lack of effective enforcement in certain national jurisdictions. Moreover, as national barriers become even more permeable, not only as a result of technological but also of political developments, such as regional or subregional common markets or other forms of integration, these enterprises have become able to devise and exploit sophisticated strategies that would be the envy of major legitimate businesses.

24. Some aspects of transnational crime have been especially devastating. A particularly heinous form of organized crime - trafficking in narcotic drugs - has not only spawned dramatically increased levels of violent crime in the nations in which the products are produced, processed and sold, it has subverted entire national economies and directly challenged the authority of governments. Terrorism, particularly in the form of bombings, hijackings and kidnappings, has become increasingly transnational. Transnational fraud of enormous proportions has been made possible through advances in computer and communications technology; large-scale fraud is no longer the province solely of criminal enterprises since today it is possible for a single computer operator in one country to fraudulently manipulate major economic transactions in a country on the other side of the world. Corrupt looting of national treasuries and investment of the funds in foreign banking institutions have succeeded on a scale that a few decades ago could scarcely have been imagined. Similarly, the frequency and scale of other transnational crimes are on the increase, including such offences as illegal arms trafficking, traffic in persons, exploitation of migrants, and thefts of works of art and artifacts that constitute a nation's cultural heritage. Moreover, illegal industrial practices and criminal negligence can destroy the natural environment far beyond any nation's borders.

2. The costs of contemporary transnational crime

25. The costs of transnational crime are beyond calculation, and almost beyond comprehension. The criminal profits alone total billions upon billions of US dollars a year. The indirect costs are far greater still.

III. THE NEED FOR INTERNATIONAL CO-OPERATION AND ASSISTANCE

26. In view of the scope and consequences of crime at the national and transnational levels, all countries are in need of co-operation and assistance, to one degree or another, in dealing with their national crime problems. All nations are in serious need of co-operation and assistance in confronting problems of transnational crime.

A. Co-operation and assistance in dealing with crime at the national level

27. The nature of the problems posed by crime, and the responses that seem most promising, vary to some extent with the economic, social, political and cultural

features of the respective countries. None the less, there are enough common features for the international exchange of ideas and experiences to be perceived as mutually advantageous. While the definition and cultural circumstances of offences vary, the basic crimes, underlying motives, methods of perpetration, and means by which they might be prevented, are common to all countries. The similarities in this respect are far more numerous and important than the differences among States.

28. Nations can, therefore, learn from the experience of others, both positive and negative, in attempting to meet the difficulties posed by crime. Successful solutions can be replicated and costly mistakes avoided. Knowledge of the gains made by other countries may suggest promising avenues that otherwise might not have been apparent. Understanding of the failures of others can caution against taking a similar route.

29. There are several areas in which all nations can benefit from sound information on the experience of others. Criminological research on the reasons for the occurrence and persistence of criminality can suggest a variety of ways by which a country can prevent a significant portion of the crime it currently experiences, and by which it might reduce the impact of that which cannot be prevented. A methodology for accurately assessing the true level of crime, the hidden costs of crime and the efficacy of the various components of the criminal justice system, may suggest the desirability of a quite different allocation of national resources. An understanding of legal and procedural innovations in other countries can lead to more effective investigative techniques, more secure means of protecting witnesses and justice system personnel, more rational structuring and application of penal laws, and more effective sanctions in order to fulfill the purposes of sentencing. Knowledge of new technological applications can lead to a variety of improvements: for example, in the investigative area, to cost-effective computerized fingerprint techniques and chromosome analyses that will make the identification process more rapid and reliable; in the prosecutorial and judicial areas, to more effective case management and legal research techniques; and in the penal and correctional areas, to the reasoned use of electronic locating devices, permitting realistic alternatives to incarceration, providing that essential human rights are observed.

30. States can be assisted in supplying each other with the requisite information by the development of a readily accessible computer network providing access to research information, by the compilation of special texts, by the promotion of international training programmes, by the exchange of experts, and by fellowships and group study tours.

B. Co-operation and assistance in dealing with crime at the international level

31. International assistance to individual countries facing transnational crime problems can take the forms outlined above. In addition, however, such assistance must overcome problems posed by national boundaries. Specifically, nations require informed assistance in developing and becoming a party to bilateral and multilateral treaties which can overcome many of the present barriers to effective investigation, prosecution and disposition of transnational offenders. Model agreements can be developed to guide the preparation of understandings and treaties promoting informal investigative mutual assistance, formal mutual assistance at the investigative and trial stages, the exchange of evidence, the securing of the presence of the defendant for trial, or permitting trial without his/her presence, and the enforcement of criminal judgements against offenders including seizure of their illegal assets. Moreover, the potential utility of more direct co-operative efforts is gaining support. Examples of the latter include the creation of a mechanism for the collaborative international investigation of particularly serious

forms of transnational crime, the possible establishment of an international criminal jurisdiction, and the creation of an international fund for assistance to crime victims, especially for victims of terrorism.

IV. THE INADEQUACY OF THE PRESENT CO-OPERATION AND ASSISTANCE

32. There are few standing mechanisms available today for co-operation and assistance. The more effective instances of co-operation and assistance have arisen sporadically, for the most part, and largely only on a bilateral basis, often in a belated response to an overwhelming problem. In spite of its pioneering role and the undeniable efforts made, the capacity of the United Nations to respond effectively in this field has been sadly limited by material and logistical constraints.

A. Bilateral co-operation

33. The necessity of international co-operation in dealing with crime and justice has long been recognized. The traditional scope of such co-operation, however, has been bilateral. This has been characteristic of most agreements on mutual assistance, extradition and recognition of penal judgements. While bilateral co-operation provides a mechanism for specific arrangements through which two countries might co-operate, they cannot provide a comprehensive solution in a world of over 160 national states, faced with a dramatic upsurge of transnational crime. Sophisticated international criminals may make a mockery of bilateral arrangements, moving their administrative and financial operations from one country to another, and staying ahead of frustrated diplomats attempting to work out a string of bilateral agreements on a seriatim basis. 12/

B. Regional co-operation

34. Recent years have witnessed the development of regional and sub-regional co-operation in crime prevention and control. The more encouraging examples have been linked with the process of regional integration in the political, economic, and cultural fields. 13/ However, because of contemporary and historical differences, difficulties lie in the way of regional and subregional arrangements becoming the basis of an integrated and comprehensive network for international co-operation in crime prevention and criminal justice matters.

C. Interregional co-operation

35. Interregional co-operation is an approach that holds great promise. It is also the least developed.

1. Activities by organizations other than the United Nations

36. The International Criminal Police Organization has undertaken to co-ordinate a number of operational policing efforts at the international level, and has proved to be of considerable assistance. International non-governmental and scientific organizations comprised of criminologists, victimologists, lawyers, judges and correctional administrators, among others, have facilitated the international exchange of information and ideas in their respective areas of competence. 14/ These organizations, however, cannot be expected to deal with intergovernmental criminal policy matters for the successful prevention and control of crime, nor can they provide concerted international action - though they can usefully play their part in it.

2. United Nations activities in the crime field

37. The United Nations is the only existing entity that has the general mandate and the international constituency necessary to provide countries with effective assistance in preventing and controlling national and transnational crime. It lacks, however, the organizational capacity to fully and effectively discharge this responsibility.

38. The United Nations Charter states the Organization's aim of safeguarding universal values, including the protection of life, health, and security of the people of the world. Fundamental in this concept is protection against the threat and depredations of crime, as well as the pursuance of peace and justice. 15/ The development of instruments by the United Nations Congresses, including declarations, model treaties and documents containing guidelines and standards, has intensified over the last 10 to 15 years, but much more remains to be done to provide comprehensive goals and standards for international crime prevention and criminal justice, consistent with the recognition of fundamental human rights, and the development of priorities as a guide to action in areas of greatest need. Despite the honest efforts of the Secretariat over the past decades, and some achievements - mostly in the promulgation of basic standards and norms against which countries can assess their progress - the expressions of concern voiced at the United Nations Congresses and in other fora have more often been followed by interminable discussion than by effective organization and action.

38 bis. Two characteristics which have helped to give the crime programme its authority have paradoxically been also a source of weakness. The need to proceed by consensus has meant that many instruments and resolutions have been drafted in vague and general terms which have reduced their impact and enabled some countries to disregard them altogether, and the enthusiasm and breadth of interests among those associated with the programme have resulted in activities and commitments on a wide range of issues where the effect is at best limited and where it is sometimes no more than a vague expression of good intentions.

39. Current United Nations activities in this field are carried out through the following modalities:

a. Quinquennial United Nations Congresses on the Prevention of Crime and the Treatment of Offenders

40. The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders are held every five years. The national delegations are drawn largely from the ranks of senior criminal justice policy makers. The Congresses are, thus, unique in permitting senior officials of the ministries of justice and the interior to have a formal role in policy development within the United Nations structure. Moreover, the Congresses bring together these governmental representatives with representatives of professional organizations and of research institutes and with individual experts, thus facilitating the cross-fertilization of expertise and experience relating to policy initiatives, legislative and scientific developments, and other relevant matters.

41. This cross-fertilization is an important benefit of the current Congresses. In addition, as indicated above, recognition must be given to the work of the Congress, particularly in the last 10 to 15 years, in the development of a body of international law and international standards in the field of crime prevention and criminal justice. 16/

42. Despite these significant achievements, the formal function of the Congresses - to give general policy direction for United Nations crime and justice

activities over the ensuing five years - has become somewhat illusionary because of the plethora of "high priority" resolutions passed by each Congress, the absence of resources, and the absence of a structured system of goals and priorities. As a result, the relevant United Nations entities have had to take responsibility for picking and choosing among the recommendations for the handful upon which they will be able to focus their limited resources. There is as yet no effective mechanism for assuring the implementation of even the most important of the resolutions adopted by the Congresses.

b. The United Nations Committee on Crime Prevention and Control

43. The United Nations Committee on Crime Prevention and Control, which is comprised of criminal justice professionals, is a standing committee of the Economic and Social Council that serves as the policy-making body for the United Nations crime and justice activities and as the preparatory body for the United Nations Congresses. 17/ The Committee, however, meets only once every two years, for an eight-day session, and consequently finds most of its working time absorbed by the responsibility of planning the next Congress. It thus has little realistic opportunity to engage in the kind of careful policy planning and supervision that many of the members find indispensable to the effective operation of the programmes of their own governments. Over the past two decades, the Committee's biennial sessions have been characterized by frequent expressions of frustration in failing repeatedly to induce the United Nations to organize effectively, and to provide resources for, a comprehensive crime and justice programme which would be commensurate with the world-wide need. 18/

c. The Crime Prevention and Criminal Justice Branch of the Secretariat

44. The Crime Prevention and Criminal Justice Branch is the Secretariat unit entrusted with the responsibility of carrying out and co-ordinating the United Nations activities in this field. It has benefited in the past, as it does today, from the services of several highly competent and dedicated professionals. The Branch, however, is understaffed, underfunded and overworked. The seriousness of the situation may be summarized by the following: the Branch is charged with undertaking, on a day-by-day basis, all of the planning and co-ordination of the crime prevention and criminal justice programme, including the technical assistance that is urgently requested by developing countries, but its staff, budget and status are grossly inadequate for this purpose. Its regular annual budget comprises only 0.1 per cent of the total United Nations Secretariat budget excluding Congress preparations and technical co-operation funds and extrabudgetary contributions.

45. The mandate of the Branch extends far beyond the capacity of its resources. Among its more important assigned functions are:

(1) Provision of guidance to Member States in the development of criminal justice policies and practical crime prevention and strategies;

(2) Provision of assistance to Member States in the preparation of need analyses and policy determination, as well as the implementation of the necessary reforms, in line with United Nations guidelines; improved criminal justice administration and the inclusion of crime prevention elements in national planning;

(3) The development, promotion and monitoring of the implementation of international norms and standards in criminal justice and crime prevention;

(4) Management and co-ordination of technical co-operation efforts, criminal justice training and action-oriented research;

(5) Development of models for collaborative international action against transnational crime;

(6) Co-ordination of the crime and justice-related activities of other Secretariat units, and of the United Nations institutes;

(7) The design and performance of world surveys of crime trends and crime prevention/criminal justice strategies, and of in-depth studies in special areas of concern;

(8) Production, collection and dissemination of useful crime and justice information, including delivery of services by the United Nations Crime Prevention and Criminal Justice Information Network.

46. Under any reasonable crime and justice programme, these would be the functions on which the Branch would be expected to expend the bulk of its time, this workload in itself requiring a staff far larger than is presently available. In fact, however, much of the time of the members of the Branch is diverted to planning and servicing the sessions of the Committee and the Congresses. The discrepancy between the extent of need and available means have precluded the achievement of an effective response to the rising tide of crime.

47. One of the main strengths of the United Nations crime prevention and criminal justice programme has been its professional and technical nature, at a time when many other United Nations initiatives have tended to become politicized. This does not mean that because of this virtue the programme should be marginalized and denied the prominence which it justly requires. The high quality of the work products that the Branch has been able to produce masks its plight with regard to resources and status. The problems under which it operates are very real and very abiding.

d. The United Nations institutes

48. There are now four United Nations institutes or United Nations affiliated institutes operating in various regions of the world, and one interregional institute. 19/ They are funded largely by the host Governments, with some outside contributions. They differ in size, funding level, facilities and their relative emphasis on professional training or criminological research. They are similar in that they are comprised of qualified and responsible professionals and that they enjoy a considerable degree of functional independence - which may further explain their efficacy.

49. The work of the institutes - from promoting law reform through the training of judges and prosecutors - has been of high quality and of considerable value. But the demands placed upon the institutes by the countries in their regions - particularly upon the institutes servicing areas encompassing many developing nations - is far beyond their current capacity. In some cases, also, earmarked funds have determined the nature of projects and precluded full support of the United Nations programme priorities. Means are required to foster inter-institute collaboration and the cross-regional exchange of knowledge and experience.

e. The impediments to the United Nations anti-crime effort as a whole

50. The United Nations crime and justice programme has been embarrassingly inadequate for years. Over and over, countries that have recognized their need for outside assistance in meeting problems of crime have requested urgent assistance from the United Nations. 20/ Often they have obtained only heartfelt expressions of sympathy and formal regrets. Other countries have wanted to request United Nations help in developing particular programmes to assist them in combating crime, but have faced the reality that the United Nations is not equipped, in terms of personnel, structure or budget supplied by Member States to undertake such assistance projects. The problem is not alleviated by a system of technical assistance on a bilateral basis. Over and over, the United Nations policy-making bodies have called for the needed strengthening of the Crime Prevention and Criminal Justice Branch and the up-grading of its status but without success. 21/

51. In spite of the repeated calls for strengthening the United Nations crime prevention and criminal justice programme, little concrete has been done to bridge the gap between the world-wide needs in this field and the international response. The organizational and structural constraints on the programme, along with the scarcity of means, have seriously hampered the fulfilment of the United Nations.

V. DEVELOPMENT OF AN EFFECTIVE INTERNATIONAL CRIME AND CRIMINAL JUSTICE PROGRAMME

52. The situation described in the previous paragraphs demands the creation of a genuinely effective international crime and justice programme. The programme should encompass all the functions necessary to assist countries in combating problems of national and transnational crime. It should be administered under a structure which will ensure its efficient operation.

A. The functions of the programme

53. A crime and justice programme able to meet the pressing needs of the contemporary world must be designed to assist countries in meeting problems of both national and transnational crime. It should encompass all forms of assistance - from information exchange and joint research to technical co-operation and collaborative action. It should be able to provide assistance that is highly practical, and to provide it in a timely fashion.

54. At the national level, it should be able to respond to the serious needs outlined above. It must offer practical information, advice and training needed to support promising programmes for crime prevention and the effective operation of the components of a well-functioning criminal justice system. It must be able to provide general assistance on a regular basis, and specific assistance when required. It must promote a recognition of the value of routine evaluation of national programmes; and of occasional, more fundamental, re-evaluation of traditional legal and procedural approaches with a view to introducing radical change when it is needed. It must be able to help countries to establish the true costs of crime and to structure laws and policies so as to help reduce them.

55. Similar functions are required at the international level. But the programme must also be so designed that it can help to overcome the various impediments to justice that in the past have been posed by the limitation of national legal jurisdictions. This can be done not only by preparing

innovative yet realistic models of bilateral and multilateral instruments for co-operation, but also by reviewing and developing the scope for international effort in the investigation and prosecution of crimes, of giving effect to the sentences imposed, and in providing relief for victims. 22/

B. The elements of the programme

56. The United Nations cannot be expected to solve, or to help countries to solve, all the problems identified in the previous paragraphs. Its contribution will vary according to the types of problem identified, both in the nature of the contribution it can make and in the extent of its possible impact. In some instances the provision of technical assistance may be able to make a critical difference to a country's capacity to cope with a particular problem; in others the development of guidelines or principles may be able significantly to influence standards of service or care; but in others international action may be capable of no more than a marginal effect.

57. Much of the programme is now established as a matter of regular reporting, analysis and publication of results. Regular reports on the implementation of instruments such as the standard minimum rules on the treatment of prisoners, and regular surveys of crime and current practice in the administration of justice, can help to maintain standards and at the same time provide an essential information base for new developments and initiatives, and a source of new ideas and insights. These arrangements need to be made more reliable and systematic, and the Committee on Crime Prevention and Control has put forward separate proposals for this purpose (resolutions L.7 and L.10). Other work will proceed under existing mandates. For expansion of these mandates and for new commitments a more systematic approach is needed, identifying the issues for priority attention, setting objectives, finding and developing resources to meet them, and monitoring the results. It is unrealistic to attempt to tackle all the issues, even the important issues, at once: some will have to be deferred until resources are released from other activities or more resources can be made available. Some issues may have to be recognized as matters that cannot be dealt with effectively by the United Nations system.

58. Issues which have been identified, explicitly or implicitly in this report for priority attention are measures to prevent and control serious international crimes and crimes without an international element but frequent in most countries. Examples of these types of crime are:

- organized crime, including major fraud, corruption and drugs;
- terrorism;
- crimes against the environment;
- property crime;
- violent crime, including street violence and domestic violence;
- juvenile delinquency.

Other issues identified in the report calling for priority attention include measures related to the enforcement of the criminal law and measures to improve the functioning of criminal justice, focusing on subjects such as:

- policing - leadership, training, structure, accountability and relations with the community;
- the role of the prosecutor in the administration of criminal justice;
- the position of the judiciary, and the relationship between the judiciary and other parts of the system;
- the use of community penalties - content, administration, safeguards and the means of maximizing their preventive effect;

- issues of prison administration, including overcrowding, standards of treatment and specific issues such as drugs and AIDS;
- international legal co-operation.

Priority attention should also be given to measures aiming at improving the situation of victims of crime. Such measures include for example:

- compensation;
- training of professional and other staff;
- international support.

59. A structure is needed in which a limited number of these or similar issues would be chosen for priority attention over specified periods, such as five years, with a reassessment and review of progress either annually or every two years. A programme of work would be drawn up for each issue, with a number of specific objectives and methods of achieving them such as those indicated in paragraph 45 above. A programme on policing, for example, could involve:

- a comparative study of police organization and practice in a number of representative countries;

- a model syllabus for police training;

- guiding principles on police conduct, community relations and complaints procedures;

- technical assistance;

- manuals on various aspects of police technology;

- monitoring the use of force, including the issue and use of firearms;

- a model agreement on international co-operation.

The material when complete could be reviewed by the next Congress or (perhaps better but depending on the scale and political importance of the study) by a special meeting of Ministers - see paragraph 65 below.

60. A procedure should be established for selecting issues for priority attention, for designing a programme for each issue, for assembling and deploying the resources needed for this purpose, and for giving effect to, monitoring and evaluating the results.

C. The organizational structure of the programme

61. To have any realistic chance of success, the programme must have an organizational structure and size consonant with its important purposes. With regard to administrative size, the following should be kept in mind: if the United Nations crime and criminal justice programme were supported by a proportion of the United Nations budget analogous to that allocated by a Member State to similar functions, the resources and staffing would be many times larger than they are at present.

62. In its overall operation, the programme must be responsible to a policy-directing body capable of reflecting the practical needs of nations. 23/ The programme must be structured to encompass and co-ordinate all the requisite facets of a comprehensive approach. It must be administered

in a manner that assures the range of projects necessary to carry out the policy directives, and that follows through with careful co-ordination, supervision and evaluation of their implementation.

63. The logical administrative placement of such a programme would be either in a new United Nations agency established and maintained with separate funding, or in a new, major unit of the Secretariat. If a new agency is established, it must be designed to work in close co-operation with those other United Nations units which might retain some peripheral crime and justice responsibilities. If a new Secretariat unit is established, it must be designed to consolidate in one place the more direct United Nations crime and justice responsibilities. Under either approach, the structure must assure the ability to co-ordinate the related United Nations functions such as the work of the United Nations institutes, and must facilitate working toward the expansion of international co-operation in investigation, adjudication, sanctioning, enforcement, research and training.

D. The mechanism for restructuring the programme

64. The establishment of a United Nations crime and criminal justice programme having the functions and organizational structure referred to above in this section requires a number of different measures. The substantive support of Member States for such measures cannot be obtained without the political will to provide such support. A summit meeting would be the most effective means of securing this political will, and in deciding upon the necessary international instrument to develop contents and structure of the programme.

65. A summit meeting or ministerial meeting on international co-operation in crime prevention and criminal justice should be convened in order to achieve improved means of international co-ordination in resolving criminal justice problems and, specifically, to provide attention on how to implement the programme.

66. An appropriate measure for eliciting international support and for developing the programme would be the adoption of an international instrument on crime prevention and criminal justice. Such an instrument could be an international convention. The past two decades have made it clear that a United Nations programme commensurate with the needs expressed by Member States will not evolve through arguments, exhortations, programme reviews and resolutions alone. Drafting a convention can well be a lengthy process and, if poorly designed, a convention may impose a degree of rigidity on the programme that negates what has been underlined above on the need for flexibility in the face of the possible differences in priorities between States and of changing circumstances. However, a well-planned, carefully considered and meticulously drafted United Nations Convention would provide an authoritative framework for the needed programme and the dynamics for its continuous development.

67. Such a convention should refer to the concern of the signatory States about the magnitude of crime and its detrimental effect on citizens and communities. It might stress the international aspects of crime and the need for international action and co-operation, and note the determination of the signatory States to improve international co-operation in crime and justice. It should also acknowledge the leadership to be undertaken by the United Nations in crime and justice and, while reaffirming the guiding principles of existing standards and norms, should recognize the compelling necessity to reinforce and supplement the existing arrangements for international co-operation on crime prevention and criminal justice.

68. The convention should deal with the prevention and control of crime with international and transnational dimensions and the provision of assistance to signatory States, upon request, in tackling their national crime problems. Regarding the form and substance of international co-operation, the convention should, inter alia, designate the agencies and channels for co-operation, forms of consultation, requirements for information to be furnished by the parties either on a regular basis or upon request, the modalities of co-operation in operational matters, technical assistance, training and other specific forms of co-operation, and mechanisms for the elaboration of international agreements, standards and norms. It could also provide the mechanism for securing their implementation. Regarding the form of the United Nations programme, the convention should determine the specific functions of the programme, the institutional structures required, the mechanisms for the necessary priority-setting, co-ordination and evaluation of the programme, and the interrelationships of the programme with other United Nations programmes.

69. The envisaged summit and convention are not ends in themselves. They are methods for expressing the collective determination of Member States to work through the United Nations in preventing crime and promoting criminal justice, and in providing the needed foundation and framework for this activity.

70. Efforts to be undertaken in the interim in order to make the structure and the contents of the programme more responsive to the needs of Member States. When they are taken within the framework of the carefully designed, focused and constructive programme outlined above, the additional effectiveness of the programme and the tangible results achieved will serve to elicit greater support:

(i) An energetic fund raising campaign, with intensive consultation with Governments in order to maximize their contributions to the programme, for example through the proposed World Foundation on Crime Control and Assistance for Victims. The fact that such extra-budgetary funds would be intended for clearly identified proposals, leading to clearly specified results, should make Member States more willing to contribute than they are at present;

(ii) Arrangements for the more effective functioning of the Committee on Crime Prevention and Control, to permit it fully to discharge its responsibility for policy development, programme priority setting and co-ordination;

(iii) Closer attention to co-ordination of the United Nations crime prevention institutes in order to ensure that their programmes at the regional and interregional levels most effectively meet the needs of Member States;

(iv) The provision, within the United Nations computerization process, of means for the full operationalization of the United Nations Crime Prevention and Criminal Justice Information Network, to ensure its proper functioning, and to provide the required information services to Governments and the professional community, facilitate the collection and dissemination of information and the transfer of knowledge and experience;

(v) Expansion of the United Nations advisory and technical co-operation activities to make possible the urgently requested technical assistance and adequate follow-up;

(vi) The elevation of the Crime Prevention and Criminal Justice Branch at least to the level of a Division, affording it the requisite range of specialized expertise. This would also afford the degree of autonomy necessary to give its work visibility and leverage. As a parallel, it should be noted that the Committee on Crime Prevention and Control previously reported to the Social Development Division and now reports to the Economic and Social Council.

71. The procedure referred to in paragraph 60 could in the first instance be established within the existing structure of the Crime Prevention and Criminal Justice Branch and the Committee on Crime Prevention and Control, with the assistance of suitable experts, perhaps on a consultancy basis, as required. The regional and interregional institute would be closely involved. Extrabudgetary funds would be needed.

NOTES

1/ No country has been able to obtain a satisfactory measure of the extent of its crime. The best approximation available is that obtained by considering both police figures on reported crime and the results of victim surveys. Unfortunately, the later are available only from a few of the more developed countries. The figures used in this report are based primarily on the national responses to the periodic "United Nations Survey of Crime Trends, Operations of Criminal Justice Systems, and Crime Prevention Strategies."

2/ This figure is based upon preliminary analysis of the results of the Third United Nations Survey for 1980-1986. Data from nine countries (Austria, the Federal Republic of Germany, France, Hungary, Malta, Poland, Portugal, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics) show that the combined total in these countries increased from 12.3 million recorded crimes in 1980 to over 15.5 million in 1986. For the major cities in these countries, the increase was from 1.35 million to 1.69 million, despite the fact that there was little increase in population. For these cities, the rate of reported crimes per 100,000 in population increased from 4,963 to 6,035.

3/ In the countries responding to the Third United Nations Survey, the amount of reported homicides, aggravated assaults, and rapes increased by 9.2 per cent from 1980 to 1986. For details, see the Report of the Secretary-General on the Third United Nations Survey (in preparation).

4/ The figure reflects the Third Survey total for robbery, theft, fraud, and embezzlement. These offences constitute about 70 per cent of all offences recorded.

5. Herbert Koppel, Lifetime Likelihood of Victimization, Bureau of Justice Statistics Technical Report, U.S. Department of Justice, March 1987.

6/ In one country, the United States, personal crimes of violence and theft, as well as burglary, larceny, and motor vehicle theft, were estimated to cost their victims 13 billion dollars per year. BJS National Crime Survey and Economic Cost of Crime to Victims, BJS Special Report, NCJ-93450, April 1984.

7/ The criminal justice system in the United States, for example, was estimated to cost the federal, state and local governments 45.6 billion dollars in 1985. Justice Expenditure and Employment in the U.S. 1985, BJS Special Report, NCJ-104460, March 1987, Table 2.

8/ From 1971 to 1977, criminal justice spending more than doubled in the United States, increased by two and a half times in Canada and France, and tripled in Great Britain. (Part of this increase is due to the effect of inflation on a labour-intensive programme). Costs of Criminal Justice, Impact no. 2/1984, Solicitor General of Canada, pp. 7-9.

9/ See, H. Wickwar, The Place of Criminal Justice in Development Planning, Monograph No. 1 of the United Nations Crime Prevention and Criminal Justice Section, New York University Press, New York, 1977. See also, Criminal Justice Systems in Europe, publication of the Helsinki Institute no. 5, Helsinki 1985, pp. 54-55.

10/ The figure is an approximation based in part upon the cost data submitted in response to the Third United Nations Survey, and in part upon the average percentage expenditures revealed in the text when applied to the national budgets of nations that have not yet submitted survey responses.

11/ See, "Anti-Drug Abuse Act of 1988". US Congressional Record-House, 21 October 1988.

12/ However, the number of bilateral arrangements is increasing and they have provided significant results for many countries, including the forfeiture of assets of those engaged in transnational as well as national crime. They need to be further developed and expanded to provide viable areas of international co-operation, particularly in areas where impediments exist to the development of multilateral forms of co-operation.

13/ The examples of particular note include those of the Council of Europe, the Benelux countries, and the Nordic countries.

14/ These include the International Penal and Penitentiary Foundation; the International Association of Penal Law; the International Society for Criminology; the International Society for Social Defence; the International Association of Judges; the Society for the Reform of Criminal Law; the World Society of Victimology; Amnesty International; the Howard League for Penal Reform; and the International Centre of Sociological, Penal and Penitentiary Research and Studies.

15/ The member States assigned the United Nations a leadership role in crime prevention and control with resolution 155 C (VII) of 13 August 1948. This role was further strengthened with the transfer of the activities of the International Penal and Penitentiary Commission to the United Nations under General Assembly Resolution 415(V) in 1950. It was clearly reaffirmed with ECOSOC resolutions 731 F (XXVIII) of 30 July 1959, 830 D (XXXII) of 2 August 1961, 1086 B (XXXIX) of 30 July 1965 and 1584(1) of 21 May 1971, and again implicit in the promotion and strengthening of international co-operation in this area by General Assembly resolutions 3021 (XXVII) of 18 December 1972, 32/59 and 32/60 of 8 December 1977, 35/171 of 15 December 1980, 36/21 of 9 November 1981, 40/32 of 29 November 1985, and 41/107 of 4 December 1986.

16/ For example, the Seventh Congress adopted over 30 major instruments and resolutions of a substantive nature.

17/ The Committee in ad hoc committees established in 1949 and 1950 to advise the Secretary-General on the formulation and implementation of United Nations leadership in the criminal justice area. The Committee currently consists of 27 members who are nominated by member states and elected by the Economic and Social Council to serve in their individual capacities as experts.

18/ A sense of the concern, if not the frustration, is discernible from the Committee's various reports, beginning at least with that of its Fifth Session in 1978 (at which the Committee reviewed the general problems of worldwide crime in light of the United Nations limited capacity to assist member nations with the problem, and concluded that the central unit of the United Nations concerned with such activity should be given an organizational status consonant with its overall responsibilities) and continuing through to that of its Tenth Session in 1988 (at which the Committee finally called for the creation of the Subcommittee that has prepared this report).

19/ The institutes, in order of the date of their affiliation with the United Nations, include the regional institute in Tokyo (UNAFEI), the interregional institute located in Rome (UNICRI), and the regional institutes in San Jose (ILANUD), Helsinki (HEUNI), and Kampala (UNAFRI). There are also two co-operating institutes in Riyadh (the Arab Security Studies and Training Centre) and Canberra (The Australian Institute of Criminology). The African institute has only recently been established. In the context of the African region, special funding provisions need be made for the institute for it to become operational and perform its assigned work.

20/ In regard to the services of the interregional adviser and to technical co-operation, see document E/AC.57/1990/2, Chapter II.

21/ When the Committee complained of the inadequate size of the Branch in 1978, it noted that it then had only eight members. When it complained of the inadequate size in 1988, it noted that it then had only seven. Other calls for expanded capacity have come from other quarters. At the 1980 Congress, the President of the host country called for the establishment of a Centre on Crime Prevention and Criminal Justice under an Assistant Secretary-General with adequate staff and resources. Thereafter, the General Assembly requested that the Secretary-General take the steps necessary to assure sufficient resources for an adequate programme by the Secretariat, in accordance with the United Nations mandate and the recommendations of the Sixth Congress. Similar views were expressed at the Seventh Congress in paragraph 8 of the Guiding Principles for Crime Prevention and Criminal Justice. Again, in 1988, the Economic and Social Council asked that the Secretary-General ensure that the United Nations anti-crime effort is supported by adequate resources to fulfill its important mandate. These requests, as a result of inadequate budgetary resources, insufficient support by Member States and other problems, remained unfulfilled. At the tenth session of the Committee, a suggestion was made for the creation of a special United Nations Centre. This suggestion reflected the frustration with the continued inadequacy of the programme. The ensuing discussion resulted in the establishment of the subcommittee which produced the present report; the proposal for the establishment of the subcommittee was co-sponsored by every member of the Committee attending the session.

22/ There have been several recent expressions of interest by representatives of national governments concerning the possibility of developing the United Nations capacity to undertake, when called upon to do so, investigative and adjudicatory functions with regard to the subject area of terrorism. A parallel responsibility might also be considered with regard to the disposition of convicted terrorists.

23/ This would enlarge upon the functions currently assigned to the Committee on Crime Prevention and Control.